SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Number 280

■

ROSCO JONES,

Petitioner

v.

CITY OF OPELIKA,

Respondent

■

Petition for Writ of Certiorari to the Supreme Court of Alabama

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To the SUPREME COURT OF THE UNITED STATES OF AMERICA:

The petition of Rosco Jones shows to the Supreme Court of the United States as follows:

A
Summary Statement of Matters Involved

1. *Statement of Facts.*

The petitioner is an ordained minister of Jehovah God and known as one of Jehovah's witnesses.

This is a criminal action. The petitioner was arrested in the City of Opelika, Alabama, and charged with an alleged violation of an ordinance of that city providing for

the taxing and licensing of trades and vocations conducted within the city. Among other things the ordinance provides for the licensing and taxing of book agents and transient dealers or distributors of books.

On the 3rd day of April, 1939, he was tried in the Recorder's Court of said city and convicted of selling or offering to sell books without a license being first obtained from the clerk of said city as required by the city ordinance aforesaid. He was fined $50.00 and costs and in default of payment thereof was sentenced to serve 90 days at hard labor for the city. He subsequently in due time appealed to the Circuit Court of Lee County, Alabama, and in due course a trial de novo was held of his case before W. B. Howling, judge of said circuit court. Upon such trial he was found guilty and again fined the sum of $50.00 and costs; and from which judgment he duly appealed to the Court of Appeals of Alabama.

The facts established by the undisputed evidence upon the trial were: That petitioner is an ordained minister of Jehovah God duly ordained to preach the Gospel of God's Kingdom under Christ Jesus, of which he was commanded to bear witness or give testimony as such minister by and through public distribution of Bible literature. At the time of his arrest he was walking along the sidewalk holding in his hand the booklets "Face the Facts" and "Fascism or Freedom" and offering the two booklets to those whom he met on the sidewalk for a small contribution of five cents. The literature in question was introduced in evidence as exhibits and clearly shows that it is devoted exclusively to explanation of Bible prophecy. The contents of this literature related to a revelation of said prophecies recorded centuries ago as they are now being fulfilled. The literature further showed that the time is near at hand when Jehovah, the Almighty God, will completely destroy Satan and his entire organization, consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Arma-

geddon; which destruction shall be immediately followed by a complete establishment of God's Kingdom throughout the entire earth, to bring everlasting peace, joy, prosperity, happiness and everlasting life to all survivors of Armageddon and eventually also to many who have died in times past and who shall be resurrected to live upon earth. The contents, in part, are admittedly an attack upon religion as practiced today and at all times since man has been upon earth, but at the same time such books clearly set forth the true distinction between all organized religion and the true worship or service of Almighty God, which is Christianity. Such books thereby expose religion as a snare and a racket of the very worst kind, and that religion is in no way related to or a part of Christianity. For further explanation see the exhibits.

Petitioner did not apply for or obtain a license because as testified by him he was an ordained minister of Jehovah God preaching the Gospel in the exact manner commanded by Him and following in the footsteps of the Lord Jesus and the apostles and to apply for a permit to do what Jehovah God commands him to do would be an insult to Almighty God, a violation of His law, which would result in his everlasting destruction. The petitioner testified that, as commanded by the Bible, 'he chose to obey God rather than man.' (Acts 20:20)

The testimony and evidence appears in the Record at pages 39 to 55, to which further reference is here made.

In due time the appeal of the conviction in question came on for a hearing in the Court of Appeals of Alabama; and thereupon that court took the case under advisement. On the 18th day of March, 1941, said Court of Appeals rendered a judgment reversing the judgment of the trial court and setting aside the conviction. (R. 61) An opinion was written and filed on said date of March 18, 1941, in which said court held that the ordinance in question had been wrongfully applied and that as so construed and applied the same was unconstitutional and void, repugnant

to the Fourteenth Amendment to the United States Constitution, because petitioner had been thereby denied his rights of freedom of speech, of press and of worship of Almighty God. The said court found the above facts said that the case could not be distinguished from the cases of *Lovell* v. *Griffin*, 303 U. S. 444, and *Cincinnati* v. *Mosier*, 61 Ohio App. 81. The opinion of said court is printed in the Record. (R. 62) A motion for rehearing was duly filed by respondent and denied. (R. 66)

Thereupon the respondent applied to the Supreme Court of Alabama, through petition for certiorari, seeking to review the ruling of said Court of Appeals. (R. 1) Upon a filing of this petition for certiorari the entire record, proceedings and judgments of the courts below were subsequently considered by the Supreme Court of Alabama. (R. 2) [Judgment of the Supreme Court] On May 22, 1941, the Supreme Court of Alabama rendered and entered a judgment reversing and annulling the judgment of the Court of Appeals and remanded the proceedings to such court for further proceedings not inconsistent with the opinion of said Supreme Court. On the same day, May 22, 1941, the said Supreme Court filed its opinion holding that *Lovell* v. *Griffin*, supra, was not controlling in the case and that the ordinance had not been wrongfully applied; that the ordinance was constitutional as applied, that the petitioner was not denied any constitutional rights through the conviction, and that the judgment of the trial court should be affirmed. (R. 3)

2. *Statute here drawn in question.*

The legislation here drawn in question is that part of an ordinance of the City of Opelika, Alabama, that was applied to the petitioner, reading, among other things, as follows:

> "Be it ordained by the Board of Commissioners of the City of Opelika, Alabama, that the following sched-

ule of rates for license or privilege taxes for conduct of any trade, vocation, profession or any other business conducted in the City of Opelika and its police jurisdiction for the year beginning January 1, 1939, and ending December 31st, 1939, and the following conditions and provisions for the conduct thereof, and the following penalties for the violation thereof be and it is hereby adopted, to-wit:

"All licenses, permits or other grants to carry on any business, trade, vocation or profession for which a charge is made by the city shall be subject to revocation in the discretion of the City Commission with or without notice to the licensee. No license shall be issued to any bootblack, newsstand, popcorn stand, weiner stand, or other similar stand, for the sale of any product where said stand proposes to locate on any street, alley or sidewalk of the city unless written permission be granted by the City Commission of the City of Opelika. . . . .

"Agents, book agents (Bibles excepted) $10.

"Transient agents or dealers or distributors of books (annually only) $5."

The ordinance appears in the Record at pages 21-38.

3. *Substantial Federal Questions Presented.*

By motion to dismiss duly filed in the Recorder's Court, petitioner raised the Federal questions here presented, asserting that the ordinance was in violation of the Fourteenth Amendment to the United States Constitution in that the ordinance as construed and applied denied and deprived the petitioner of his rights of freedom of speech, of press and of worship of Almighty God contrary to the aforesaid Amendment to the United States Constitution.

The said Recorder's Court duly considered and passed upon such questions and specifically held that the ordinance was applicable and that petitioner was not denied his rights of speech, of press and of worship.

At the close of all the evidence on the trial de novo in the Circuit Court before the judge, without a jury, on November 2, 1939, the petitioner duly filed in writing his motion to dismiss the charges on the grounds that the ordinance in question under which the complaints had been filed had no application to the facts and that as applied was void and unconstitutional in that it deprived the petitioner of his rights of speech, of press and of worship contrary to the Fourteenth Amendment to the United States Constitution. (R. 14, 15) The Circuit Court denied the motion to dismiss and held that the ordinance properly covered the petitioner and as construed and applied did not deprive the petitioner of said rights contrary to the Constitution and was therefore constitutional. (R. 16)

These questions were properly and duly preserved by the petitioner in harmony with the practice of the State of Alabama and were thereafter duly presented to the Court of Appeals of Alabama. The said Court of Appeals specifically considered and sustained each of the points so presented and held that the ordinance as construed and applied to the petitioner was contrary to the Fourteenth Amendment to the United States Constitution and ordered the conviction set aside and complaint dismissed. Said court specifically found the petitioner to be an ordained minister of the Gospel of Jehovah's Kingdom and for such reason did not come within the terms of the said ordinance. (R. 62) [Opinion]

The respondent by motion for rehearing duly filed claimed that the said Court of Appeals erred in holding that the ordinance as construed and applied violated the Fourteenth Amendment of the United States Constitution. The motion for rehearing in the Court of Appeals was overruled. (R. 66) When the petition for certiorari was

filed with the Supreme Court of Alabama the said Supreme Court had before it and considered the entire record of the case and specifically considered the assignments of error urged by the petitioner in the said Court of Appeals. The Supreme Court of Alabama specifically overruled each of such assignments of error and contents urged by petitioner and specifically held that the ordinance was applicable and that the petitioner was not denied his rights of freedom of speech, of press and of worship contrary to the Fourteenth Amendment to the United States Constitution. (R. 3) [Opinion]

Therefore there are presented for review substantial Federal questions to this Court as follows:

Is the ordinance in question as construed and applied by the court below violative of the Fourteenth Amendment to the United States Constitution in that it abridges and denies petitioner's rights of freedom of speech, of press and of worship of Almighty God secured and included within the "due process" clause of said Amendment?

B

Reasons Relied on for Allowance of Writ

The questions presented here are of national importance and basically affect the fundamental personal and civil rights of every person domiciled within the United States. The Supreme Court of Alabama has rendered a decision on a most important Federal question in a way that nullifies the Constitutional guarantees and provisions with respect to personal freedom. The opinion of that court has misconstrued opinions of this Court and warped them so as to deprive them of their true meaning for the purpose of amputating the petitioner's freedom. The opinion and decision of the Alabama Supreme Court is in direct conflict with applicable decisions of this Court. Such court has radically and so far departed from the accepted and

usual course of judicial proceedings as to demand an order of this Court halting such extraordinary departure from established principles of liberty and constitutional law. In effect the opinion and decision has placed a "foreign amendment" upon the Constitution without "due process". It is based upon the sophistry that streets belong to the public and activity thereon can be licensed. It is founded on the proposition that freedom of the press means "free of charge distribution" and does not cover "sale" or exchange for contributions. The opinion is directly contrary to the Court of Appeals in the case at bar, which Court of Appeals opinion expresses the applicable American rule.

The decision and opinion is grounded upon the case of *Cox* v. *New Hampshire*, 312 U. S. 275, which case is obviously not at all in point. The opinion is based upon the opinion by the Circuit Court of Appeals in the case of *Manchester* v. *Leiby*, 117 F. (2) 661 (certiorari denied 61 S. Ct. 838). The ordinance involved in the *Leiby* case was not at all in point with the ordinance here questioned. Furthermore we submit that the *Leiby* opinion by the First Circuit Court of Appeals is contrary to the Constitution and applicable opinions by this Court. We say that the denial by this Court of the petition for certiorari on April 7, 1941, did not constitute an approval by this Court of the reasoning expressed in the opinion and did not constitute approval of the holding that the ordinance there involved was valid. This Court has repeatedly said that the denial of certiorari does not amount to an approval of the merits or reasoning of the court below. See *United States* v. *Carver*, 260 U. S. 482, 490; *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U. S. 251, 258; *Ohio ex rel. Seney* v. *Swift & Co.*, 260 U. S. 146, 151; *Atlantic Coast L. R. Co.* v. *Powe*, 283 U. S. 401, 403.

The holding of the Supreme Court of Alabama (to the effect that the preaching of the Gospel of God's Kingdom through distribution of printed literature for which *con-*

tributions were received when done on the *streets* of the City of Opelika is not entitled to the protection of the Constitutional guarantees against application of an ordinance requiring the licensing of "book agents or transient dealers of books") is a new theory entirely foreign to American life and pioneer jurisprudence established by our forefathers, which should be removed and eradicated by this Court before it reaches more devastating consequences. The court below held that the guarantee of freedom of the press does not extend to "sale" of printed information and opinion, i.e., if money was accepted for the literature distributed, that such transaction took the matter beyond the reach of the Fourteenth Amendment to the United States Constitution. This identical contention was made by the Supreme Court of Errors of the State of Connecticut in the *Cantwell* case, 310 U. S. 296, which contention was expressly rejected by this Court as foreign.

Petitioner was engaged in the circulation of printed matter containing information about the Kingdom of Almighty God which is shortly to be established on the earth and also containing Bible explanations of present conditions of distress and perplexity prevalent in the earth. There is no distinction or difference between this case and the cases of *Schneider* v. *Town of Irvington,* 308 U. S. 147, *Lovell* v. *Griffin,* 303 U. S. 444, and *Cantwell* v. *Connecticut,* supra, all of which announce the Constitutional guarantee as to the activity of this petitioner. The Alabama Supreme Court ruled directly in conflict with the above decisions and strained at a distinction which is impossible to reach when viewed in the light of this Court's prior rulings.

The court below relies mainly upon the *Manchester* v. *Leiby,* supra, opinion on the theory that such case said it was "the sale which could be regulated". The First Circuit Court by obiter dictum discussion in the case of *Hannan et al.* v. *Haverhill et al.* (now before this Court on petition for certiorari) has, at least, said that the right of freedom of the press was not confined to free distribution, and said

that if such were the rule then the exercise of the right of press would become the prerogative of the well-to-do and wealthy class, partially overruling its prior opinion in *Manchester* v. *Leiby*. In that case that court also held that a city might require a license for commercial peddling of merchandise other than literature while it could not license the sale of literature.

Another reason relied upon for the allowance of the writ is the fact that petitioner is an ordained minister of the Gospel of the Kingdom of Almighty God and as such minister he does not come within the provisions of the ordinance because he preaches by publicly distributing literature on the streets concerning these matters and from some who take the literature he receives contributions to aid in printing and distributing more like literature. It cannot be said by anyone, even this Court, that such does not constitute "preaching the Gospel". The apostles each and all taught and preached publicly and from house to house. (Acts 20:20) See also Proverbs 1:20, 21.

The activity of preaching the Gospel thus cannot be regulated by permit from the municipality or state even when carried on upon the streets; because the streets have been held from time immemorial as the natural and proper place for the dissemination of information and opinion on such matters as this. (*Schneider* v. *State*, supra)

Furthermore, the ordinance in question confers arbitrary and discriminatory powers of *"prior censorship of press"* upon the City Commission and confers upon the Commission the unlimited and arbitrary power of revocation of licenses without notice. Thus the ordinance is void on its face because it attempts to regulate the press activity of all persons dealing in books or booklets within the city.

Wherefore your petitioner prays that this Court issue a writ of certiorari to the Supreme Court of Alabama directing such court to certify to this Court for review and determination on a day certain to be therein named, a full

and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the decree of the court be reversed and that your petitioner may have such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

ROSCO JONES,
Petitioner

By
JOSEPH F. RUTHERFORD
HAYDEN COVINGTON
Attorneys for Petitioner

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A

Opinions of the Court Below

The opinion of the Supreme Court of Alabama is not yet officially reported. It appears in the Record at pages 3 to 9. The opinion of the Alabama Court of Appeals is not yet officially reported. It appears in the Record at pages 62 to 65.

B

Jurisdiction

1. *Timeliness.*

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)].

The judgment of the Supreme Court of Alabama was rendered and entered of record on the 22nd day of May, 1941. (R. 2)

The petition for writ of certiorari is filed herein before the expiration of three months from the date the decree and judgment of said Supreme Court of Alabama was rendered and entered, which is within the time allowed by law.

2. *The statute.*

The validity of state legislation under the United States Constitution was drawn into question in this case and the decisions of each of the trial courts and the Supreme Court were wrongfully in favor of its validity, while the decision of the Alabama Court of Appeals was against its validity, which court's judgment was set aside by the Supreme Court of Alabama. The legislation challenged here is an ordi-

nance of the City of Opelika, Alabama, which was in full force and effect at the time of the transaction in question, reading in words and figures as follows:

"Be it ordained by the Board of Commissioners of the City of Opelika, Alabama, that the following schedule of rates for license or privilege taxes for conduct of any trade, vocation, profession or any other business conduct in the City of Opelika and its police jurisdiction for the year beginning January 1, 1939 and ending December 31st, 1939, and the following penalties for the violation thereof be and it is hereby adopted, to-wit: . . .

"All licenses, permits or other grants to carry on any business, trade, vocation or profession for which a charge is made by the city shall be subject to revocation in the discretion of the City Commission with or without notice to the licensee. No license shall be issued to any bootblack, news stand, pop-corn stand, weiner stand, or other similar stand for the sale of any product where said stand proposes to locate on any street, alley or sidewalk of the city unless written permission be granted by the City Commission of the City of Opelika. . . .

"Agents, book agents (Bibles excepted) $10.

"Transient agents or dealers or distributors of books (annually only) $5.00."

(R. 21-23, 26)

In holding that the ordinance is not unconstitutional because it abridges freedom of speech, press and worship in violation of the Fourteenth Amendment to the United States Constitution, the Supreme Court of Alabama held that the statute properly applied to the activity of peti-

tioner and decided in favor of its validity on its face and as so applied. (R. 3-9)

Petitioner duly and properly urged in all the courts below that the said ordinance on its face and especially as applied and construed to him was invalid because it deprived him of above described rights contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

From the very beginning, therefore, the validity of the legislation here challenged as being in contravention of the Fourteenth Amendment was thus drawn in question. The judgments of the trial courts were in favor of the validity of such ordinance but the Alabama Court of Appeals held against its validity — however, the Supreme Court of Alabama found in favor of the validity thereof, reversing the Court of Appeals and affirming the trial court.

C
Statement of the Case

A full statement of the case has been given herein (supra, pages 1 to 7) and for the sake of brevity will not be repeated but is here referred to.

D
Specification of Errors

Petitioner assigns the following errors in the record and proceedings of said case:

The Supreme Court of Alabama committed fundamental error in reversing, setting aside and holding for naught the decision of the Court of Appeals and in affirming the judgment of the Circuit Court by ruling that the petitioner was guilty of a violation of said ordinance of the City of Opelika, because the said ordinance is invalid, as construed

and applied by the courts below, in that it deprives petitioner of his right of freedom of press, of speech, of conscience and of worship of Almighty God as commanded by Him in the Bible, contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

And for these reasons it is reversible error for the Supreme Court of Alabama to set aside the judgment of the Court of Appeals and affirm the judgment of conviction rendered by the Circuit Court and hold that the statute was valid and Constitutional.

The Supreme Court errs in holding that the ordinance as applied was a proper and valid exercise of the police power.

PRELIMINARY ARGUMENT

It is to be noted that the opinion, in addition to being extremely unsound and a radical departure from the applicable decisions of this Court in *Cantwell* v. *Connecticut*, supra, *Schneider* v. *Irvington*, supra, and *Lovell* v. *Griffin*, supra, the decision is also in conflict directly with the following opinions and decisions declaring such laws invalid as applied to the above described activity of Jehovah's witnesses in preaching the Gospel of God's Kingdom, that is to say, the cases of *People* v. *Kieran et al.*, 26 N. Y. S. (2) 291, *Tucker* v. *Randall* (N. J.), 15 A. (2) 325, *Commonwealth* v. *Anderson* (Mass.), 32 N. E. (2) 684, *City of Gaffney* v. *Putnam* (South Carolina Supreme Court opinion rendered June 2, 1941, unreported at time of this writing), *Semansky* v. *Stark, Sheriff*, 199 So. 129 (La.), *Thomas* v. *Atlanta*, 59 Ga. App. 520, 1 S. E. 2d 598, *Cincinnati* v. *Mosier*, 61 Ohio App. 81, *California* v. *Northum et al.*, 103 Cal. Supp. 295, 41 C. A. 2d 284, *Village of South Holland* v. *Stein*, 26 N. E. (2) 868 (Ill.). Each of the above cases involves Jehovah's witnesses shown to have been receiving contributions for the literature and working in the same

way as petitioner was doing it; and the ordinances and laws there held to be unconstitutional are very similar to the statute here drawn in question.

ARGUMENT

The ordinance in question is invalid and unconstitutional as construed and applied by the courts below in that it deprives petitioner of his right of freedom of press, of speech, of conscience and of his right to worship Almighty God as commanded by Him in the Bible, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

The pernicious doctrine that constitutionally secured "free press" extends only to "*free* distribution" (or "gift") of literature is a new theory unheard of until modern-day totalitarian principles have pushed to the fore. Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against statutes such as this if he gave away printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The claim is, therefore, *foolish*. Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, such as the petitioner here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through "press activity" is entitled to let those receiving the information aid in keep-

ing the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money for the literature is only incidental to the main activity of petitioner. It is a means to an end, that is to say, further proclamation of the Kingdom message of Almighty God.

The theory advanced by the Alabama Supreme Court would make constitutional guarantee of freedom of the press the sole prerogative of the rich. This would "sandbag" the Constitution and sabotage all the liberties of the people.

In the case of *Cantwell* v. *Connecticut,* supra, the Connecticut Supreme Court of Errors attempted to distinguish the conviction under the solicitation statute on the grounds that 'it was the soliciting contributions' that brought them within the terms of the statute, "and not their more predominant activity of distributing literature." That doctrine was rejected by this Court. The opinion in the instant case is also contrary to *Schneider* v. *Irvington,* supra, where the undisputed evidence showed that one of Jehovah's witnesses received money contributions for books and was prosecuted under the ordinance "because she canvassed without a permit".

The undisputed evidence shows that the right which petitioner exercises is that of worshiping Almighty God by acting as an *ordained minister* in preaching the Gospel, and also press activity, and the action of the Opelika authorities in arresting and prosecuting him is in excess of their lawful authority; and it is the unconstitutional application of said statute to petitioner's activities that invalidates it.

It will be recalled that in the case of *Concordia Fire*

Insurance Co. v. *Illinois*, 292 U. S. 535, 545, the court said:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

The petitioner is an *ordained minister* of the Gospel of God's Kingdom or Theocracy, which is a righteous government that will be fully established in the earth very shortly. He possesses credentials showing his ordination. He has entered into a covenant or agreement with Almighty God as provided in Isaiah 61:1, 2 and other scriptures to do the will of Almighty God, which is to preach or proclaim the judgments of Almighty God and His message of hope recorded in the Bible, to all people of good-will toward Almighty God. In order to enable such persons to flee from the Devil's organization to The Theocracy, and thus receive everlasting life under such righteous government, which will bring peace, prosperity and happiness to all who survive the battle of Armageddon — near at hand — Jehovah's witnesses preach the Gospel publicly throughout the land. To enable the petitioner to effectively thus preach the Gospel 'publicly and throughout every city until the cities are desolate' (Isaiah 6:11) the petitioner uses books, booklets, magazines and pamphlets which contain the entire message. This literature he employs as a substitute for talking, or sermons, and which is more effective because it can be studied by the recipients in the quiet of the home. Thus much time is saved and more people are reached.

In thus acting, the petitioner is a duly ordained minister of the Gospel of Jehovah God's Kingdom. It cannot properly be said that such conduct does not constitute a proper worship or service of Almighty God. This showing is conclusive upon all concerned in the matter. Further-

more, this Court has held that the individual alone is privileged to determine what he shall or shall not believe and how he shall exercise his right of conscience in performing such belief. The law of this land does not attempt to settle differences of creed and confession, and will not say that any point, doctrine or practice is too absurd to be believed. *Reynolds* v. *United States,* 98 U. S. 145, 162, quoting from Jefferson's Virginia Statute of Religious Freedom; also, *United States* v. *Macintosh,* 283 U. S. 605, 634.

If the practice or belief does not involve a violation of the law of morals, invade the right of property, or imperil, by clear and present danger, the safety of the nation and state, then such cannot be interfered with by any kind or character of statute, whether valid or invalid. Being bound by the conclusion that petitioner is an *ordained minister,* what is next presented?

Attention of this Court is kindly drawn to the case of *Thomas* v. *City of Atlanta,* supra, where one of Jehovah's witnesses was convicted under an ordinance prohibiting peddling without a license. In reversing the conviction, the Georgia Court of Appeals said:

> "We do not think it is the duty of an ordained minister of the gospel to register his business with the city. Neither is it peddling for such minister to go into homes and play a victrola, or to preach therein or to sell or distribute literature dealing with his faith if the owner of such home does not object. The preaching and teaching of a minister of a religious sect is not such a business as may be required to register and obtain and pay for a license so to do. Neither is a sale by such minister of tracts or books connected with his faith a violation of a statute against peddling. Under the evidence in this case the sale of the book was collateral to the main object of the defendant, which was to preach and to teach his religion."

To the same effect is *Village of South Holland* v. *Stein*, supra, *Semansky* v. *Stark*, supra, *Cincinnati* v. *Masier*, supra, *Schneider* v. *Irvington*, supra, *Cantwell* v. *Connecticut*, supra.

The City of Opelika, state of Alabama, has no more authority to require petitioner, one of Jehovah's witnesses, to register with the Commissioners than it would to require the religious priests, religious clergy and religious rabbis of Opelika to register as a condition precedent to giving their sermons and conducting their different religions in the City. It is clearly apparent that such statute cannot be applied so as to interfere with or deprive petitioner of his right of worship. This is the petitioner's way of worship and it cannot be denied because none of the exceptions can be found to exist which would warrant the denial of such right.

The *way* of worshiping Almighty God as done by the petitioner in this case is commanded by the written law of Almighty God. God's law is supreme. This rule is recognized by Blackstone in his *Commentaries* (Chase 3d ed., pp. 5-7). See also Cooley's *Constitutional Limitations*, 8th ed., p. 968. Petitioner greatly desires to have life and to live, and therefore he must serve Almighty God; for it is written that God is the fountain of life. (Psalm 36:9) One who desires to live must obey God's law. (John 17:3) Petitioner stands in the same position as the apostles of Jesus Christ who, when haled before magistrates and requested to discontinue their preaching the Gospel from house to house, as they did at the time of their arrest, and when ordered to desist, told the court, "We ought to obey God rather than men." (Acts 5:17-42) Thereafter, as it is written concerning them, "daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ." —Acts 5:42.

Should the petitioner cease to proclaim the written judgments of Almighty God by yielding to threats of police officials or for any other reason, he would violate the

agreement previously made by him to obey the law of Almighty God, who commands such proclamation to be made now, irrespective of persecution; and petitioner would thereby subject himself to everlasting destruction, as he verily believes. See Ezekiel 33:8, 9; Acts 3:22, 23.

The petitioner refused to apply for a permit or license because he is an *ordained minister* of Almighty God, preaching the Gospel, and did not come within the provisions of the statute, and furthermore he chose to follow in the footsteps of the Master, Christ Jesus, and His apostles, who preached "publicly and from house to house" and who steadfastly refused to get "permits" from the "state" of their day, and refused to discontinue preaching when requested by the state to discontinue.

It would be an insult to Almighty God to apply to some man of the world, which is ruled over by Satan, for a permit or license to do that which God has *commanded* to be done at the pain of everlasting death for refusal or failure on the part of Jehovah's witnesses to so preach, as He has plainly commanded.

Tested in the light of the standards contained in the cases cited, the ordinance under which the petitioner was convicted cannot stand the test of the Fourteenth Amendment to the Constitution because on its face and as applied in this case there is a clear infringement by "prior censorship" of the press.

Section 4 of the Alabama Constitution provides:

> "That no law shall ever be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write, or publish his sentiments on all subjects, being responsible for the abuse of that liberty."

The ordinance gives the commissioners complete control over the circulation of informative matter throughout

the municipality. It is left to their discretion in granting permission based on its determination of what it considers proper "without notice" to anyone. A prior conviction of any offense would undoubtedly stand as a mark of bad character in the eyes of the Board. An ex-convict selling books on prison reform could be interdicted under the ordinance without any redress. Any local political reformer who published and distributed books on corruption of the local officials in administering their offices would be in the same perilous position.

The provision of this ordinance is very similar to the Irvington ordinance outlawed by this Court in *Schneider* v. *State* described by this Court as inquisitorial. On authority of *Schneider* v. *State,* this ordinance should be declared invalid. In the *Schneider* case, Clara Schneider was shown to have done the same work as this petitioner was doing. Clara accepted money contributions for the books, yet this Court held that such conduct on her part did not bring her under the ordinance. The same thing was held in *Cantwell* v. *Connecticut,* supra, also involving one of Jehovah's witnesses doing the same work as petitioner.

No doubt the complaint of some residents annoyed by the petitioner's literature would be considered by the commissioners as ample reason for denial of license. This would be a prohibition of controversial matter. The pamphlets of Thomas Paine, William Lloyd Garrison, Alexander Hamilton, Martin Luther, and others, annoyed many people. It is impossible to circulate information on a disputed issue without annoying someone, but such is the very life of free press and a free country.

The State may not under the guise of 'reasonable police regulation' chisel off liberty of the press by subjecting that to license. The only fields of press activity which may be touched upon by law are (1) immoral and obscene matter, (2) seditious matter, (3) libel of individuals. None of these elements are found in the literature. By no stretch of the imagination can it be said that the literature comes

within any of such limitations. There is nothing immoral or seditious about the literature. The Court of Appeals found that the literature was not immoral and was not seditious. (R. 62)

There is no evidence that petitioner littered the streets with it. There is no suggestion or intimation that he was guilty of disorderly conduct or interference with other people's rights. There is no evidence that he distributed the books or booklets at any unreasonable time. He is not charged with any of such; but even if he was he could not be prosecuted and convicted under this ordinance providing for "license and tax".

Ordinances identical with this one when applied even to "sale of literature" have been held invalid by the courts of the greatest municipality in the world (New York City). See the cases of *People* v. *Max Banks*, 6 N. Y. S. (2nd) 41, *People* v. *Samuel Finkelstein*, 2 N. Y. S. (2nd) 941, and cases cited; see also *De Berry* v. *La Grange* (Ga.), 8 S. E. (2nd) 146, also involving one of Jehovah's witnesses.

Furthermore, it is clear that the activity of the petitioner was activity of the press and was and is such press activity protected by the Constitution. The streets are the natural and proper places for the dissemination of such information (*Schneider* v. *Irvington*, supra) and this right cannot be denied or abridged on the theory that it can be better exercised elsewhere. The conveniences of the City of Opelika to keep desired conditions on the streets do not warrant licensing or abridgment. (*Schneider* v. *Irvington*, supra, *Cantwell* v. *Connecticut*, supra, *Hague* v. *C. I. O.*, 307 U. S. 496) The duty of the officials to maintain order does not warrant the prior censorship of the press which is permitted by the application of the statute to the facts in this case. *Hague* v. *C. I. O.*, supra, *Thornhill* v. *Alabama*, 310 U. S. 88, 95, *Grosjean* v. *American Press Company*, 297 U. S. 233, *De Jonge* v. *Oregon*, 299 U. S. 353, 364, *Stromberg* v. *California*, 299 U. S. 233, *Near* v. *Minnesota*, 283 U. S. 697, 707.

CONCLUSION

It is therefore submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that errors complained of may be corrected and that to such end a writ of certiorari ought to be granted that this Court review the decision of the Supreme Court of the State of Alabama.

Confidently submitted,

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